

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**LATOYA BROWN; LAWRENCE BLACKMON
HERBERT ANTHONY GREEN; KHADAFY MANNING;
QUINETTA MANNING; MARVIN MCFIELD; NICHOLAS
SINGLETON; STEVEN SMITH; BESSIE THOMAS; and
BETTY JEAN WILLIAMS TUCKER, individually and on
behalf of a class of all other similarly situated,**

PLAINTIFFS

v.

CIVIL ACTION NO. 3:17-cv-347 WHB LRA

**MADISON COUNTY, MISSISSIPPI; SHERIFF
RANDALL C. TUCKER, in his official capacity; and
MADISON COUNTY SHERIFF'S DEPUTIES JOHN
DOES #1 through #6, in their individual capacities,**

DEFENDANTS

**MEMORANDUM BY DEFENDANTS IN SUPPORT OF [#183] MOTION TO DISMISS
CLAIMS OF PLAINTIFF, HERBERT ANTHONY GREEN, WITH PREJUDICE FOR
FAILURE TO PROSECUTE UNDER *FEDERAL RULE OF PROCEDURE* 41(b)**

Defendants, Madison County, Mississippi, and Sheriff Randall C. Tucker, in his official capacity, submit the following memorandum in support of their Motion to Dismiss the Claims of Plaintiff, Herbert Anthony Green, with Prejudice for Failure to Prosecute under *F.R.C.P.* Rule 41(b). Mr. Green's claims must be dismissed under Rule 41(b) because he has purposefully refused to prosecute his claims.

STATEMENT OF FACTS RELEVANT TO MOTION TO DISMISS

Plaintiff, Herbert Anthony Green, filed his complaint against Defendants on May 8, 2017. Defendants propounded interrogatories and requests for production to Mr. Green on September 22, 2017. Mr. Green responded to these interrogatories on October 23, 2017, but, after receiving objections from Defendants though a good faith letter, Mr. Green never verified his supplemental responses. Since then, Mr. Green has done absolutely nothing to prosecute his claims. He has (1) failed to respond to a second set of interrogatories Defendants propounded to him; (2) failed to

further supplement his responses to Defendants first interrogatories along with the other plaintiffs; and (3) failed to appear for three duly-noticed depositions. More importantly, according to his attorneys, Mr. Green has decided that he no longer wants to participate in this litigation. (See Exhibit 1, January 14, 2018, Email from Plaintiffs' Attorneys).

ARGUMENT AND AUTHORITIES

Rule 41(b) allows this Court to dismiss Green as a plaintiff in this matter with prejudice for his failure to prosecute his claims under its inherent authority to prevent undue delay of cases before it and to prevent prejudice to Defendants' rights to expeditiously and fully defend the claims against them. *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962) ("The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted. The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.") See also *Clark v. McMillin*, 2010 WL 1781697, * 2 (S.D. Miss. March 26, 2010) ((Plaintiffs' failure to prosecute their claims "have prejudiced the rights of the Defendants to promptly and fully defend the claims made against them."); *Garner v. Shelton*, 2010 WL 2545923 at *1 (S.D. Miss., May 18, 2010) ("This Court has the authority to dismiss an action for failure of a plaintiff to prosecute . . . under Fed.R.Civ.P. 41(b) and under its inherent authority.") (citing *Link*, 370 U.S. at 630-631). Under existing Fifth Circuit law dismissal under Rule 41(b) is required if one of the following three factors exist: "(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct." *Berry v. Cigna/RSI-Cigna*, 975 F.2d 1188, 1191 (5th Cir. 1992) (citing *Morris v. Ocean Systems*, 730 F.2d 248, 251 (5th Cir. 1984)). All three of these factors exist in this case.

It is abundantly clear that Mr. Green has made a deliberate decision that he no longer wants to participate in this litigation. This decision has prejudiced Defendants by significantly impairing their ability to defend against his claims. Any lesser sanctions against Mr. Green for his failure to prosecute will not satisfy the interests of justice in this action or remove the prejudice suffered by Defendants.

CONCLUSION

For the reasons set forth above, Defendants, Madison County, Mississippi, and Sheriff Randall C. Tucker, in his official capacity, submit that their Motion to Dismiss the claims of Herbert Anthony Green with prejudice under Rule 41(b) should be granted.

This the 14th day of February, 2018.

Respectfully submitted:

**MADISON COUNTY, MISSISSIPPI and
SHERIFF RANDALL C. TUCKER, IN HIS
OFFICIAL CAPACITY**

By: /s/ Rebecca B. Cowan

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CERTIFICATE OF SERVICE

I, Rebecca B. Cowan, do hereby certify that I have this day, electronically filed the above and foregoing with the Clerk of the Court using the ECF system which will automatically provide e-mail notification of said filing upon the following:

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So, certified this the 14th day of February, 2018.

/s/ Rebecca B. Cowan

From: Rethy, Isaac <IRethy@stblaw.com>
Sent: Sunday, January 14, 2018 9:38 PM
To: 'Charlie Ross'; 'Charles Cowan'; Becky Cowan; 'Mike Wallace'; 'James Graves'; 'Russell Nobile'; 'Katie Snell'; 'Lawson Hester'
Cc: 'Joshua Tom'; Youngwood, Jonathan; Gochman, Janet A.; Sivashanker, Kavitha; Choudhri, Nihara K; Jarrett, Bonnie; 'Jeffery Robinson'; 'Ezekiel Edwards'
Subject: Brown v. Madison County, No. 3:17-cv-00347-WHB-LRA

Counsel,

Herbert Anthony Green is unavailable for deposition tomorrow, January 15, 2018. It is Mr. Green's present intention to discontinue his participation in this action. We anticipate filing a motion seeking dismissal without prejudice of Mr. Green's claims. Please confirm that defendants will not oppose this motion.

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